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3 **UNITED STATES DISTRICT COURT**4 **DISTRICT OF NEVADA**

5 Charles Smith,

6 Petitioner,

7 v.

8 William Hutchings, et al.,

9 Respondents.  
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Case No.: 2:20-cv-01781-RFB-VCF

**Order**

11 This action is a petition for writ of habeas corpus under 28 U.S.C. § 2254 brought by  
12 Charles Smith, a Nevada prisoner who is serving an aggregate sentence of 35 years with a  
13 minimum of 14 years before parole eligibility. ECF No. 1-1. This court previously ordered him to  
14 pay the \$5.00 filing fee to initiate this action and to file an amended habeas petition on the court's  
15 approved form. ECF No. 3.

16 Smith has paid the filing fee, so his initial petition (ECF No. 1-1) and motion for  
17 appointment of counsel (ECF No. 1-2) will be filed by the Clerk. Instead of filing an amended  
18 petition, however, Smith filed a motion to stay this case in order to exhaust his state court remedies  
19 before proceeding herein. ECF No. 6. Finding that appointment of counsel is warranted, the court  
20 will grant petitioner's motion for appointment and deny his motion to stay without prejudice.

21 "Indigent state prisoners applying for habeas corpus relief are not entitled to appointed  
22 counsel unless the circumstances of a particular case indicate that appointed counsel is necessary  
23 to prevent due process violations." Chaney v. Lewis, 801 F.2d 1191, 1196 (9<sup>th</sup> Cir. 1986) (citing

1 Kreiling v. Field, 431 F.2d 638, 640 (9<sup>th</sup> Cir. 1970) (per curiam). The court may, however, appoint  
2 counsel at any stage of the proceedings “if the interests of justice so require.” *See* 18 U.S.C. §  
3 3006A; see also Rule 8(c), Rules Governing § 2254 Cases; Chaney, 801 F.2d at 1196. It appears  
4 likely that there will be relatively complex issues to be addressed at the outset of this case, and it  
5 appears that Smith may not be able to adequately litigate those issues without counsel. Therefore,  
6 the court finds that appointment of counsel is in the interests of justice.

7 IT IS THEREFORE ORDERED that the Clerk of Court shall **file** the petition for writ of  
8 habeas corpus (ECF No. 1-1) and motion for appointment of counsel (ECF No. 1-2) attached to  
9 petitioner’s motion to proceed *in forma pauperis*.

10 IT IS FURTHER ORDERED that the Clerk is directed to add Aaron Ford, Attorney  
11 General of the State of Nevada, as counsel for respondents and to provide respondents an electronic  
12 copy of all items previously filed in this case by regenerating the Notice of Electronic Filing to the  
13 office of the Attorney General only.

14 IT IS FURTHER ORDERED that respondents shall have 20 days from the date on which  
15 the petition is served upon them to appear in this action. Respondents will not be required to  
16 respond to the habeas petition at this time.

17 IT IS FURTHER ORDERED that petitioner’s motion for appointment of counsel is  
18 GRANTED. The Federal Public Defender for the District of Nevada (FPD) is appointed to  
19 represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict of interest or  
20 other reason, then alternate counsel will be appointed. In either case, counsel will represent the  
21 petitioner in all federal-court proceedings relating to this matter, unless allowed to withdraw.

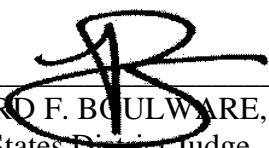
22 IT IS FURTHER ORDERED that the Clerk shall ELECTRONICALLY SERVE upon the  
23 FPD a copy of this order, together with a copy of the petition for writ of habeas corpus.

1 IT IS FURTHER ORDERED that the FPD shall have 20 days from the date of entry of this  
2 order to file a notice of appearance, or to indicate to the court its inability to represent the petitioner  
3 in this case.

4 IT IS FURTHER ORDERED that the court will establish a schedule for further  
5 proceedings after counsel appear for the petitioner and the respondents.

6 IT IS FURTHER ORDERED that petitioner's motion to stay (ECF No. 6) is DENIED  
7 without prejudice.

8 Dated: January 11, 2021

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11 RICHARD F. BOULWARE, II  
12 United States District Judge  
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